

**COMMONWEALTH OF MASSACHUSETTS**

**PLYMOUTH, SS**

**BROCKTON SUPERIOR COURT**

**Indictment No.**

**COMMONWEALTH**

**v.**

**DEFENDANT**

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**COMMONWEALTH'S MOTION TO RECONSIDER COURT ORDER FOR PRODUCTION OF  
DOCUMENTS**

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The Commonwealth respectfully requests this Honorable Court to reconsider the April 3, 2012 allowance of the Defendant's oral motion for the Commonwealth to obtain and provide to defense counsel DPH Chemist A.D.'s personnel file and any records or documents relating in any way to the investigation of a breach of protocol by A.D. pursuant to Defense Counsel's Subpoena Duces Tecum sent to the Laboratory on or about March 30, 2012.

As reasons therefore, the Commonwealth submits to the Court that both the testimony and any personnel records of A.D. are irrelevant to the case before the Court for the following reasons:

- 1) The narcotics involved in this case have been re-tested by a new confirmatory chemist, Peter Piro on April 9, 2012;
- 2) Confirmatory Chemist A.D. never had custody nor touched the mass amount of narcotics that were received and tested by the laboratory;
- 3) The breach in laboratory protocol by A.D. occurred on June 14, 2011 and was caught by the laboratory on June 16, 2011, two days after the breach.
- 4) The breach in laboratory protocol by A.D. had absolutely nothing to do with the case before the Court. The confirmatory testing performed by A.D. on September 29, 2005 was performed more than six (6) years prior to the breach in protocol in 2011;

- 5) The laboratory's own safety mechanisms in place to identify problems prevented A.D.'s error from going unnoticed.

In further support of the Commonwealth's motion, the Commonwealth submits that the isolated mistake made by A.D. over six years after her involvement in the case before the Court is irrelevant and ought to be excluded. The defendant ought to be barred from impeaching the Commonwealth's laboratory experts with evidence of this isolated and wholly unrelated mistake made by A.D. In Commonwealth v. Cruz, the Appeals Court properly found that "the trial judge properly barred the defendant from impeaching the prosecution's two medical experts with evidence of their alleged isolated mistakes or inconsistencies in wholly unrelated prior cases. Such evidence was, under well-established principles, either legally irrelevant to the reliability of the experts' testimony here or, if marginally relevant, was excludable in the judge's discretion as an unduly time-consuming, collateral and confusing diversion." 53 Mass.App.Ct. 393, 407 (2001), 53 Mass. App. Ct. 393, 407 (2001), rev. denied, 436 Mass. 1103 (2002).

Respectfully Submitted  
For the Commonwealth

DISTRICT ATTORNEY

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SIGNATURE